

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of

DOCKET FILE COPY ONLY

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

NPCR, Inc. d/b/a Nextel Partners

Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Alabama

Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Florida

Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Georgia

Petition for Designation as an
Eligible Telecommunications Carrier
in the Commonwealth of Pennsylvania

Petition for Designation as an
Eligible Telecommunications Carrier
in the state of Tennessee

Petition for Designation as an
Eligible Telecommunications Carrier
in the Commonwealth of Virginia

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

Nextel Partners of Upstate New York, Inc.
d/b/a Nextel Partners

Petition for Designation as an
Eligible Telecommunications Carrier
in the state of New York

To: The Commission

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OFFICE OF THE SECRETARY

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NEXTEL PARTNERS' REPLY

NPCR, Inc. and Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners (hereinafter, collectively, "Nextel Partners"), by the undersigned attorneys, pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, hereby file this Reply in response to the "Supporting Comments" of OPASTCO (hereafter, the "OPASTCO Comments") and the "Reply Comments" of Verizon (hereafter, the "Verizon Comments")¹ that were filed in response to the Application For Review ("Application") of the Rural Local Exchange Carriers ("Rural LECs")² with regard to the Order of the Wireline Competition Bureau (the "Bureau")³ in the above-captioned proceeding.⁴

The Bureau's Order designated Nextel Partners as an eligible telecommunications carrier ("ETC") in requested service areas in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia, pursuant to section 214(e)(6) of the Communications Act ("the Act"), 47 U.S.C. §214(e)(6). As set forth in Nextel Partners' Opposition to Application for Review filed October 12, 2004 ("Opposition"), the Application is without merit and should be denied.

¹ "Supporting Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies," filed October 12, 2004; and "Reply Comments of Verizon in Support of Application for Review Filed by the Rural Local Exchange Carriers," filed October 12, 2004.

² Application For Review of TDS Telecommunications Corp. et. al, filed September 24, 2004.

³ *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners Petitions For Designation as an Eligible Telecommunications Carrier in the States of Alabama, Florida, Georgia, Pennsylvania, Tennessee, and Virginia, Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners Petition For Designation as an eligible Telecommunications Carrier in the State of New York*, CC Docket No. 96-45, DA 04-2667 (rel. August 25, 2004) ("Order"), amended by *Erratum* released September 13, 2004.

⁴ The Commission's rules governing Applications for Review under 47 CFR § 1.115 provide for the filing of an opposition and a reply, but do not provide for the filing of "Supporting Comments" or "Reply Comments," and therefore the Verizon and OPASTCO filings do not need to be considered by the Commission. In the event the Commission treats and considers these "comments" as *Ex Parte* filings, in order to make the record complete, we ask that the Commission accept this Reply pursuant to the pleading cycle established under 47 CFR § 1.115.

Neither the Verizon nor the OPASTCO Comments present anything new that might warrant grant of the Application or reversal of Nextel Partners' ETC status.

Like the Rural LECs that filed the Application, neither Verizon nor OPASTCO dispute that Nextel Partners meets the requirements for designation as an ETC under existing standards.⁵ Nor do they dispute that Nextel Partners' ETC status serves important public interest benefits and goals. In particular, they do not dispute the Bureau's findings that by bringing reliable state-of-the-art digital mobile communications to rural citizens Nextel Partners brings to these citizens the benefits of consumer choice, larger local calling areas resulting in reduced toll charges, and mobile access "to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities."⁶

Instead, like the Rural LECs, Verizon and OPASTCO contend that Nextel Partners' ETC status must be taken away in order to protect against growth of the Universal Service Fund. In making these arguments, Verizon and OPASTCO, like the Rural LECs, entirely ignore the specific finding of the Bureau that the designation of Nextel Partners would *not* have a significant impact on the size of the Fund.⁷ Rather than addressing the specific effect that Nextel Partners' ETC status might have on the Fund, Verizon and OPASTCO site to general trends in Fund growth and hypothetical macro projections as support for their position that Nextel Partners' ETC designation should be reversed. Thus, Verizon asserts that *all competitive ETCs*

⁵ See Nextel Partners' Opposition, documenting that there is no legitimate basis to undermine the ETC designation standards established in the Commission's carefully-balanced *Virginia Cellular* decision.

⁶ *Order*, at ¶18.

⁷ The Bureau concluded that designation of Nextel Partners "will not dramatically burden the universal service fund," explaining, "even assuming that Nextel captures each and every customer located in the affected study areas, the overall size of the high-cost support mechanisms would not significantly increase." *Order*, at ¶ 21.

combined received a total of \$131 million in High-Cost support during 2003, or 4% of total High-Cost support, and that the amount may grow to 7% of total High-Cost support during 2004;⁸ and OPASTCO speculates that if *all* CMRS providers everywhere were somehow to become designated as ETCs, an unrealistic scenario at best, then the High-Cost program could hypothetically grow by \$2 billion.⁹

Verizon's macro trend statistics and OPASTCO's unrealistic guesstimate are of no relevance to the instant proceeding, which involves only the designation of *Nextel Partners* as an ETC in specified parts of seven states. Nextel Partners' ETC designation will not cause the High-Cost program to grow by any significant amount. As noted above, this is what the Bureau specifically found and neither the Application nor the Comments challenge this finding. Even the Rural LECs acknowledge that the grant of ETC designation to Nextel Partners in the seven states covered by the *Order*, as well as additional states covered by state petitions that are either pending or have been granted, could result in \$5-6 million annually in USF payments to Nextel Partners.¹⁰ This amount is not significant in comparison to the macro numbers cited by Verizon and OPASTCO.

It is also not significant in comparison to the amount of High-Cost support currently being received by Verizon and various of the Rural LECs themselves. Verizon alone, for example, is projected to receive approximately 10% of all High-Cost support during 2004, or more than \$325 million, which is 35% more than the amount projected to be received by *all*

⁸ Verizon Comments at 2.

⁹ OPASTCO Comments at 4, n.8.

¹⁰ *See Application* at 8.

competitive ETCs nationwide.¹¹ Similarly, the Frontier/Citizens companies are projected to receive \$170 million in support and the TDS companies are projected to receive \$114 million in support during 2004.¹² In comparison to these numbers, the amount of High-Cost support that Nextel Partners will receive as a result of the Bureau's *Order* is insignificant. It is thus apparent that the true motive underlying these parties' attack on Nextel Partners' ETC designation is not so much to protect the Fund from a threat that Nextel Partners' designation simply does not present as it is to hinder Nextel Partners from being a meaningful competitor in the designated service areas.

As the Bureau indicated in its *Order*,¹³ the concerns about macro growth trends and hypothetical overall projections being expressed by OPASTCO, Verizon and the Rural LECs are best addressed in the general rulemaking proceedings presently underway in this docket. Those proceedings are examining such issues as macro Fund growth and methodology for calculating support to *all* rural ETCs, including Verizon, OPASTCO's members and the Rural LECs.¹⁴ These concerns are well outside the scope of this proceeding, which involves only the designation of Nextel Partners as an ETC in study areas in seven states. These issues therefore do not present a basis for reversing the grant of ETC designation to Nextel Partners. In sum, the Application of the Rural LECs should be denied and the Bureau's *Order* affirmed.

¹¹ See Table HC01, "High-Cost Support Projected by State by Study Area – 4Q2004" available at: <http://www.universalservice.org/overview/filings/2004/Q4/default.asp>.

¹² *Id.*

¹³ See *Order* at ¶21.

¹⁴ See *Public Notice, Federal-State Joint Board On Universal Service Seeks Comment On Certain Rules relating to High-Cost Universal Service Support*, FCC 04J-2 (rel. August 16, 2004); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127, Notice of Proposed Rulemaking (rel. June 8, 2004); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04J-1, Recommended Decision, (rel. February 27, 2004).

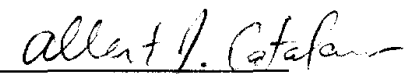
CONCLUSION

In view of the foregoing, the Commission should deny the Application For Review of the Rural LECs and affirm the Bureau's Order designating Nextel Partners as an ETC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of October 2004, copies of the foregoing Opposition to Applications for Review were sent by first-class U.S. Mail, postage prepaid, to each of the following:

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